

CRS Report for Congress

Intelligence and Information-Sharing Elements of S. 4 and H.R. 1

June 26, 2007

Todd Masse
Specialist in Domestic Intelligence and Counterterrorism
Domestic Social Policy Division



Prepared for Members and
Committees of Congress

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 26 JUN 2007		2. REPORT TYPE		3. DATES COVERED 00-00-2007 to 00-00-2007	
4. TITLE AND SUBTITLE Intelligence and Information-Sharing Elements of S.4 and H.R. 1				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service,The Library of Congress,101 Independence Ave, SE,Washington,DC,20540-7500				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 15	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Intelligence and Information-Sharing Elements of S. 4 and H.R. 1

Summary

Title I of S. 4 and Title VII of H.R. 1 include corresponding measures related to enhancing information and intelligence sharing, both horizontally within the federal government and vertically between the federal government and state and local law enforcement and homeland security authorities. The companion bills have two common subtitles (one each for the Homeland Security Information Sharing Enhancement and Homeland Security Information Sharing Partnerships) and a number of unique subtitles. Each of the common subtitles does not necessarily contain identical language. Three subtitles unique to H.R. 1 are (1) the Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program, (2) the Border Intelligence Fusion Center Program, and (3) the Homeland Security Intelligence Offices Reorganization. One subtitle, the Interagency Threat Assessment Coordination Group (ITACG), is unique to S. 4.

With respect to Homeland Security Information Sharing Enhancement, at the most aggregate level, the bills would require the Secretary of Department of Homeland Security (DHS) to integrate and standardize the information of DHS intelligence components into a Department information-sharing environment. Among other measures, the bills would require the Secretary of DHS to implement a Homeland Security Advisory System, which shall provide “... in each warning or alert specific information and advice on ... appropriate protective measures and countermeasures that may be taken in response to the threat or risk.” Furthermore, the responsible DHS official shall, “...whenever possible, limit the scope” of each advisory or warning “to a specific region, locality, or economic sector believed to be at risk.” Unique to H.R. 1 is a proposal that would stipulate that DHS “...shall not ... use color designations as the exclusive means of specifying homeland security threat conditions.” The Department would be required to develop mechanisms to provide feedback to state, local, tribal, and private sector officials on the utility of information they gathered. Both bills also include language to provide monetary and non-monetary information-sharing incentives for employees in federal agencies that possess or use intelligence or terrorism information.

With respect to unique subtitles within these bills, H.R. 1 proposes the establishment of a Border Intelligence Fusion Center Program and a FLEET Grant Program. Each of these programs would authorize funds to hire individuals either at the federal or state and local level who would replace law enforcement officers or intelligence analysts assigned to certain fusion centers. H.R. 1 proposes to reorganize some the intelligence entities within DHS, to include renaming the current Assistant Secretary of Intelligence and Analysis to an Under Secretary, defining what constitutes a DHS intelligence component and outlining the roles and responsibilities of DHS intelligence components. Unique to S. 4 is the proposed codification of the ITACG, which would “...facilitate the production of federally coordinated products derived from information within the scope of the information sharing environment ... and intended for distribution to State, local and tribal government officials and the private sector.” It is proposed that an undetermined number of state and local intelligence and law enforcement officials would be members of the ITACG.

Contents

Introduction	1
Fusion and Law Enforcement Education and Teaming (FLEET)	
Grant Program	2
Fusion Centers	2
Border Intelligence Fusion Center Program	3
Homeland Security Information-Sharing Enhancement	4
Unique House Provisions	5
Unique Senate Provisions	5
DHS Advisory System	6
Definition of DHS Intelligence Component	6
Integration and Standardization of DHS Intelligence	7
Program Manager ISE Term, Functions, and Additional Resources ...	7
Homeland Security Information-Sharing Partnerships	7
Unique House Provisions	8
Unique Senate Provisions	8
Homeland Security Intelligence Offices Reorganization	9
Interagency Threat Assessment Coordination Group	11

Intelligence and Information-Sharing Elements of S. 4 and H.R. 1

Introduction

The Final Report of the National Commission of Terrorist Attacks Upon the United States (hereafter the 9/11 Report), was published in July 2004 and included numerous recommendations to enhance, among other measures, terrorism information¹ and intelligence sharing across the federal government, as well as between the federal government and state and local governments. The primary interest of these changes was to deter, detect, and ultimately prevent terrorist attacks such as that which took place on September 11, 2001. On December 17, 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), P.L. 108-458. The law included many of the initiatives outlined in the 9/11 Report, including the codification of the Director of National Intelligence position and the establishment of a National Counterterrorism Center. The law also created an Information Sharing Environment (ISE) led by a Program Manager to facilitate “...the means for sharing terrorism information among all appropriate Federal, State, local, and tribal entities, and the private sector through the use of policy guidelines and technologies.”² While the IRTPA directed substantial changes in the Intelligence Community, it was perceived that from an information-sharing perspective, more could be done to enhance vertical and horizontal information sharing.

Title I of S. 4 and Title VII of H.R. 1 include corresponding measures related to enhancing information and intelligence sharing, both horizontally within the federal government and vertically between the federal government and state and local law enforcement and homeland security authorities. The companion bills have two common subtitles (one each for the Homeland Security Information Sharing Enhancement and Homeland Security Information Sharing Partnerships) and a number of unique subtitles. Each of the common subtitles does not necessarily contain identical language. Three subtitles unique to HR. 1 are (1) the Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program, (2) the Border

¹ Terrorism information is defined as “...all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to (A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism; (B) threat posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations; (C) communications of or by such groups or individuals; or (D) groups or individuals reasonably believed to be assisting or associated with such groups or individuals.” P.L. 108-458 § 1016, codified at 6 U.S.C. § 485.

² See IRTPA, Section 1016, codified at 6 U.S.C. § 485.

Intelligence Fusion Center Program, and (3) the Homeland Security Intelligence Offices Reorganization. One subtitle, the Interagency Threat Assessment Coordination Group, is unique to S. 4. A summary of the common and unique subtitles follows:

- Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program (Unique to H.R. 1).
- Border Intelligence Fusion Center Program (Unique to H.R. 1).
- Homeland Security Information Sharing Enhancement.
- Homeland Security Information Sharing Partnerships.
- Homeland Security Intelligence Offices Reorganization (Unique to H.R. 1).
- Interagency Threat Assessment Coordination Group (Unique to S. 4).

Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program

H.R. 1 would establish a grant program “...under which the Secretary of Homeland Security, in consultation with the Attorney General, shall make grants to local and tribal law enforcement agencies....” The proposed purposes for which these grants would be used include (1) to hire (state or local) personnel or pay existing personnel to perform the duties of eligible personnel who are detailed to a fusion center, (2) to provide appropriate training for eligible law enforcement personnel who are detailed to a fusion center, and (3) to establish communications connectivity between eligible law enforcement personnel who are detailed to a fusion center and the home agency or department from which they are detailed. There is no comparable FLEET provision in S. 4.

Fusion Centers. According to H.R. 1,

the terms State, local, or regional fusion center mean a State intelligence center, or a regional intelligence center that is the product of a collaborative effort of at least two qualifying agencies that provide resources, expertise, or information to such center with the goals of maximizing the ability of such intelligence center and the qualifying agencies participating in such intelligence center to provide and produce homeland security information to detect, prevent, apprehend, and respond to terrorist and criminal activity.

There are approximately more than 40 such fusion centers in operation around the country.

While the existence of the information fusion function precedes the terrorist attacks of September 11, 2001, it was not until the post-attack period that the potential counterterrorism utility of such centers was recognized. In general, these

centers have been established as initiatives of state and local governments, sometimes in regional cooperative configurations. Historically, the centers have largely been financed by participating state and local governments. Recently, the federal government has provided support for these centers through (1) provision of *Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era* (August 2006; earlier Guidelines were published in July 2005), (2) the detailing of intelligence analysts and intelligence liaison personnel from the Department and the Federal Bureau of Investigation (FBI) to these centers;³ (3) “in-kind” support to include assisting state and local officials assigned to fusion centers in obtaining security clearances; and (4) start-up financing through the DHS, Homeland Security Grant Program (HSGP).⁴ According to DHS, for the time period FY2004 through FY2006, more than \$130 million of actual funding was provided to fusion centers.⁵ In FY2007, for the first time, “... hiring new staff and/or contractors to serve as intelligence analysts to support information/intelligence fusion capabilities...” is allowable under certain conditions.⁶

Border Intelligence Fusion Center Program

H.R. 1 would establish a Border Intelligence Fusion Center Program “... for the purpose of stationing Bureau of Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) officers or intelligence analysts in the

³ According to information provided at the first annual National Fusion Center Conference, held March 5-8, 2007, DHS currently has intelligence personnel deployed to 15 state, local, and regional fusion centers. According to the FBI, it currently has deployed 250 personnel stationed at 35 fusion centers. See also FBI, *Fusion Centers*, information provided by the FBI to CRS, dated May 25, 2007.

⁴ The Homeland Security Grant Program is composed of five interconnected grant programs: (1) State Homeland Security Program, (2) Urban Areas Security Initiative, (3) the Law Enforcement Terrorism Prevention Program, (4) the Metropolitan Medical Response System, and (5) the Citizens Corp Program. See DHS, Office of Grants and Training, *FY 2007 Homeland Security Grant Program — Program Guidance and Application Kit*, January 2007, p. 1.

⁵ See DHS, Office of Grants and Training, *Fusion Centers: DHS Funded Activities — Fiscal Years 2004-2006*, April 2007, p. 6. This actual amount of total obligations and expenditures for state and local fusion centers stands in contrast to the “projected” or “requested” amount of DHS HSGP funds (\$380 million) applied for by fusion centers during the 2001-2007 time period. DHS was created in March 2003, pursuant to the Homeland Security Act of 2002 (P.L.107-296), signed November 7, 2002.

⁶ These costs are allowable under both the Urban Area Security Initiative (UASI) and the Law Enforcement Terrorism Prevention Program (LETPP) grant programs. To be hired as an intelligence analyst, individuals must meet certain training and/or experience criteria. In terms of sustainment costs, the DHS *FY 2007 Homeland Security Grant Program: Program Guidance and Application Kit* states that “Costs associated with hiring new intelligence analysts are allowable only for two years, after which the States and Urban Areas shall be responsible for supporting the sustainment costs for those intelligence analysts.” See *FY 2007 Homeland Security Grant Program: Program Guidance and Application Kit*, p. 26.

fusion centers of participating border States.”⁷ Furthermore, such personnel would assist state, local and tribal law enforcement in jurisdictions along the northern and southern borders to “... overlay threat and suspicious activity with Federal homeland security information in order to develop a more comprehensive and accurate threat picture.” Funding proposed for this measure would be “... available to hire new CBP and ICE officers or intelligence analysts to replace CBP and ICE officers and intelligence analysts who are stationed at border State fusion centers....” S. 4 has no comparable provision.

Homeland Security Information-Sharing Enhancement

Both bills include a subtitle on the homeland security information-sharing enhancement, although the provisions are not identical. Much of the responsibility for the initiatives under the bills would be implemented either by the Secretary of Homeland Security or by the DHS Chief Intelligence Officer, a position also currently assigned the title of Assistant Secretary for Intelligence and Analysis. As explained below, H.R. 1 recommends that the existing position of Assistant Secretary for Intelligence and Analysis be changed to an Under Secretary for Intelligence and Analysis. S. 4 makes no such change and, therefore, refers to either the Secretary of DHS and/or the Chief Intelligence Officer, sometimes in consultation with other governmental officials, as being responsible for implementing the initiatives.

At the most aggregate level, the bills would require the Secretary of DHS to “integrate and standardize the information of the intelligence components of the Department into a Department information sharing environment....”⁸ Such an integration would be administered by the Under Secretary for Intelligence and Analysis (H.R. 1) or the Chief Intelligence Officer (S. 4). The two bills define a DHS intelligence component similarly as “... any directorate, agency, or element of the Department that gathers, receives, analyzes, produces, or disseminates homeland security information....”

Furthermore, each of the bills would require the

- Secretary (S. 4) or the Under Secretary for Intelligence and Analysis (H.R. 1) to enhance the Homeland Security Advisory System,⁹ which

⁷ A Border State Fusion Center is defined as “... a fusion center located in the State of Washington, Idaho, Montana, North Dakota, Minnesota, Wisconsin, Michigan, Ohio, Pennsylvania, New York, Vermont, New Hampshire, Maine, California, Arizona, New Mexico, or Texas.”

⁸ S. 4 excepts from this integration and standardization “...any internal protocols of such intelligence components.”

⁹ See CRS Report RL32023, *Homeland Security Advisory System: Possible Issues for Congressional Oversight*, by Shawn Reese, and CRS Report RL32897, *Post-9/11 National Threat Notification Efforts: Issues, Actions, and Options for Congress*, by John Rollins and Lynn J. Cunningham.

shall, among other functions, provide in each warning or alert¹⁰ specific information and advice on “... appropriate protective measures and countermeasures that may be taken in response” to the threat or risk. Furthermore, the responsible DHS official shall, “...whenever possible, limit the scope” of each advisory or warning “to a specific region, locality, or economic sector believed to be at risk.” Unique to H.R. 1 is a proposal which would stipulate that the Under Secretary for Intelligence and Analysis “... shall not, in issuing any advisory or alert, use color designations as the exclusive means of specifying homeland security threat conditions.”

- Department to designate information-sharing and knowledge management officers for each intelligence component with respect to “...coordinating the different systems used in the Department to gather and disseminate homeland security information.”
- Secretary to establish business processes to review and analyze information gathered from state, local, and tribal government officials and private sector sources. DHS would be required to develop mechanisms to provide feedback on the utility of such information to state, local, tribal and private sector officials.
- Training and evaluation of DHS employees to understand the definition of homeland security information, how information available to them as part of their duties might qualify as homeland security information, and how such information available to them might be relevant to the Department’s Office of Intelligence and Analysis (H.R.1) or intelligence components of the Department (S. 4).

Unique House Provisions. One proposal unique to H.R. 1 is the requirement that the Secretary, acting through the Chief Intelligence Officer, establish a comprehensive information technology network architecture for the Office of Intelligence and Analysis. The bill would provide that “... to the extent possible (the architecture) incorporate the approaches, features, and functions of the network proposed by the Markle Foundation ... known as the System-wide Homeland Security Analysis and Resource Exchange (SHARE) Network.”

Unique Senate Provisions. S. 4 proposes adding a category of information that will be shared by DHS-weapons of mass destruction (WMD) information. The

¹⁰ As terms of art, “warning” and “alert” terms are often used interchangeably. At the most basic level, the difference between the two terms turns on at least the following three factors: (1) accuracy and validity/reliability of the intelligence, (2) extent to which intelligence indicates that a threat is imminent, and (3) extent and specificity of federally recommended remedial actions to combat the threat. If the terms are viewed on a spectrum, with the far left being advisory and the far right being a warning, it could be argued that as information or intelligence moves from left to right, the confidence in the intelligence may become greater, the threat may become more imminent, and the security recommendations from the federal government may become more specific.

bill defines WMD information as that “... which could reasonably be expected to assist in the development, proliferation, or use of weapons of mass destruction ... that could be used by a terrorist ... against the United States.” Moreover, the bill proposes eliminating the two-year tenure for the ISE’s Program Manager by making it permanent. S. 4’s proposed language would amend Section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) to read, “...The individual designated as the program manager shall serve as the program manager until removed from service and replaced by the President...” S. 4 would also authorize \$30 million for each of fiscal years 2008 and 2009 for the ISE Program Manager to hire “not more than 40 full-time employees to assist the program manager” in numerous information-sharing functions. In two other unique measures, S. 4 would require the Secretary and Chief Intelligence Officer to (1) develop intelligence training curriculum for state, local, and tribal officials, and (2) develop financial and other incentives for employees to share information.

DHS Advisory System. With respect to the Homeland Security Advisory System, the bills would provide greater congressional direction to the Secretary in the administration of this program by responding to often-heard criticisms directed at the system and the Department by first responders, state and local law enforcement, and some private sector entities. The sections of the bills which would require the Department to provide enhanced advice regarding protective measures and countermeasures may prove difficult to implement, if enacted, as some might question whether the Department has, in each situation, a sufficient understanding of the “ground truth” or current risk profile in order to recommend such measures. State and local authorities may be more familiar with the resources they have at their disposal to take protective actions against any potential threat. If DHS has any specific information about the types of threat directed against a particular asset, this information could prove highly useful, if provided to first responders *before* (emphasis added) the threat is imminent. With regard to the geographic scope of warnings, the measures outlined in the bills appear to be consistent with ongoing efforts between the FBI and DHS to provide such targeted warnings to conserve first responder resources.¹¹

Definition of DHS Intelligence Component. With respect to the definition of what constitutes a DHS intelligence component, H.R. 1’s proposed definition codifies activities as intelligence related in a manner that appears to go beyond how the Department has defined its Intelligence Enterprise. It stipulates that a DHS intelligence component is defined as “... any directorate, agency, or element of the Department that gathers, receives, analyzes, produces or disseminates homeland security information....”¹² According to the *DHS Intelligence Enterprise Strategic Plan* (January 2006), the DHS Intelligence Enterprise includes “... all those component organizations within the Department that have activities *producing* (emphasis added) raw information, intelligence-related information, and/or finished

¹¹ See CRS Report RL32897, *Post 9/11 National Threat Notification Efforts: Issues, Actions, and Options for Congress*, by John Rollins and Lynn J. Cunningham. See also CRS Report RL32023, *Homeland Security Advisory System: Possible Issues for Congressional Oversight*, by Shawn Reese.

¹² See H.R. 1 RFS, Title VII, § 723.

intelligence.” Such an extension beyond production may expand the universe of entities within the Department that are considered by the Office of Intelligence and Analysis as part of the intelligence enterprise.

Integration and Standardization of DHS Intelligence. It would appear that, given the current state of homeland security intelligence within the Department, these measures might facilitate a more corporate approach to intelligence at DHS. According to DHS Management Directive 8110, *Intelligence Integration and Management* (January 2006), the Chief Intelligence Officer does not have (1) formal budget formulation and execution authority over the DHS intelligence elements outside of the largely headquarters-based Office of Intelligence and Analysis, (2) an established and integrated management information system into which all DHS-collected intelligence and information is entered, or (3) the ultimate authority to recruit and select the leaders of the DHS intelligence components. In the absence of these three tools, it could be argued that developing a sense of “what the Department knows” collectively and, perhaps more importantly, “what it doesn’t know” could be problematic. Moreover, recent CRS research has indicated that, at least with respect to risk assessment and how such assessments flow through the Homeland Security Grant Program, state and local threat information is not considered in any meaningful and systematic manner.¹³ Feedback provided to state, local, and private sector partners could go a long way toward building goodwill and more effectively targeting their information and intelligence collection activities.

Program Manager ISE Term, Functions, and Additional Resources. Given the complexities of the functions associated with this position, and the long-term nature of enhancing intelligence and information sharing across all levels of government, it would seem reasonable that the program manager position be a permanent position. Uncertainty of the permanence of this position might undermine the development of a new “culture” within the Intelligence Community based on sharing, institutional knowledge, and the building of broad-based relationships to implement the ISE’s Implementation Plan (published in November 2006). It also appears that S. 4 would provide the ISE Program Manager with additional powers to “... identify and resolve information sharing disputes between Federal departments, agencies and components...” How this will be implemented in practice is an open question. When possible differences on information-sharing issues are raised, for example, between the FBI and DHS, the authority of the ISE Program Manager to direct each or both of these agencies to change their internal information-sharing practices is questionable. Are the ISE Program Manager’s authorities commensurate with the position’s responsibilities?

Homeland Security Information-Sharing Partnerships

Each of the bills would require the Secretary (in consultation with the ISE Program Manager, the Attorney General, and others according to S. 4 provisions) to establish a State, Local, and Regional Information Fusion Center Initiative to

¹³ See CRS Report RL33858, *The Department of Homeland Security’s Risk Assessment Methodology: Evolution, Issues and Options for Congress*, by Todd Masse, John Rollins, and Siobhan O’Neil.

“...establish partnerships with State, local and regional fusion centers.” Through this DHS initiative, the Secretary would carry out 13 functions, including, but not limited to (1) coordinating with the principal official of each fusion center, and the official designated as the State Homeland Security Advisor; (2) providing DHS operational and intelligence advice and assistance to these centers; (3) conducting table-top and live training exercises to regularly assess the capability of individual and regional networks; (4) provide analytic and reporting advice and assistance to the centers; and (5) review homeland security information gathered by state, local, and regional fusion centers and incorporate relevant information with homeland security information of the Department. Both bills would require the Secretary to draft a fusion center “Concept of Operations Report” to be submitted by the Secretary to the House and Senate Homeland Security Committees. Such a report would

- include a clear articulation of the purposes, goals, and specific objectives for which the program is being developed;
- identify stakeholders in the program and provide an assessment of their needs;
- contain a developed set of quantitative metrics to measure, to the extent possible, program output; and
- include a privacy and civil liberties impact assessment.¹⁴

Each of the bills would also establish a Homeland Security Information Sharing Fellows Program for the purpose of “... detailing State, local and tribal law enforcement officers and intelligence analysts *to the Department* (emphasis added) to participate in the work of the Office of Intelligence and Analysis....”

Unique House Provisions. With respect to the aforementioned Homeland Security Information Sharing Fellows Program, H.R. 1 would condition participation in the program on the agreement of the state, local or tribal entity to “...continue to pay the individual’s salary and benefits during the period for which the individual is detailed.” However, it would also provide for a “... stipend to cover the individual’s reasonable living expenses ...” during the period for which they are detailed to the Office of Intelligence and Analysis, subject to the availability of appropriations.

Unique Senate Provisions. S. 4 would provide that the Chief Intelligence Officer “...may, to the extent practicable, assign officers and intelligence analysts from...” DHS intelligence elements to state, local, and regional fusion centers. S. 4 also proposes a requirement that before being assigned to a fusion center, DHS intelligence analysts must undergo analysis, privacy, and civil liberties training. Moreover, S. 4 outlines the responsibilities of DHS intelligence analysts detailed to state, local, and regional fusion centers, and would require that these individuals have

¹⁴ See “State, Local and Regional Information Fusion Center Initiative,” in S. 4 RS, Title I, section 206. While H.R. 1 RFS, Title VII, section 732 also requires a concept of operations for the fusion center initiative, it is limited to “...a privacy and civil liberties impact assessment.”

access to “...all relevant Federal databases and information systems, consistent with any policies, guidelines, procedures, instructions, or standards established by the President or, as appropriate, the program manager of the information sharing environment for the implementation and management of that environment.” S. 4 would authorize to be appropriated \$10 million for each of fiscal years 2008 through 2012 for the fusion center initiative, “... for hiring officers and intelligence analysts to replace officers and intelligence analysts who are assigned to fusion centers....” Finally, S. 4 proposes the creation of the Rural Policing Institute, which would “...develop expert training programs designed to address the needs of rural law enforcement agencies regarding combating methamphetamine addiction and distribution, domestic violence, law enforcement responses related to school shootings and other topics....”

To some extent these legislative initiatives would codify nascent, yet ongoing, activities in the Department. Currently, there exists within DHS a State and Local Fusion Center Program Office, which performs some of the missions outlined in these bills. For example, the office is responsible for recruiting, from both within DHS and externally, intelligence analysts and intelligence liaison officers to be detailed to state, local, and regional fusion centers. DHS currently has 15 such intelligence personnel assigned to fusion centers. According to Charles Allen, DHS Chief Intelligence Officer, by the end of FY2008, DHS plans to embed intelligence officers in more than 35 fusion centers.¹⁵ However, codification of this initiative may provide a sense of greater congressional support for and direction to such a program.

Under S. 4, DHS personnel eligible to be assigned to fusion centers, “...in consultation with the respective component head” under the proposed fusion center initiative would include the following:

- Office of Intelligence and Analysis, or its successor;
- Office of Infrastructure Protection;
- Transportation Security Administration;
- United States Customs and Border Protection;
- United States Coast Guard; and
- Other components of the Department as determined by the Secretary.

This S. 4 proposal does not specify whether the eligible individuals from the aforementioned DHS components must be federal employees, or whether contractors serving in these entities may also be eligible. This could have implications for the extent to which the DHS individuals may be granted access to statewide criminal intelligence and information systems resident in most fusion centers.

Homeland Security Intelligence Offices Reorganization

H.R. 1 would amend the Homeland Security Act of 2002 (6 U.S.C. 121) by replacing the “Directorate of Information Analysis and Infrastructure Protection” with a proposed “Office of Intelligence and Analysis.” Moreover, the “Under

¹⁵ See testimony of Charles Allen, DHS Chief Intelligence Officer, Before the Senate Select Committee on Intelligence, January 25, 2007.

Secretary for Information Analysis and Infrastructure Protection” would be replaced with an “Under Secretary for Intelligence and Analysis.” The responsibilities of the Under Secretary for Intelligence and Analysis would be adjusted, with new statutory responsibilities including (1) coordinating and enhancing integration among intelligence components of the Department, (2) establishing structure and process to support the mission and goals of the Department, and (3) ensuring that unclassified reports based on open source information “...are produced and disseminated contemporaneously with reports or analytic products concerning the same or similar information that the Under Secretary for Intelligence and Analysis produces and disseminates in a classified format.” The bill also proposes the Under Secretary for Intelligence and Analysis establish an Internal Continuity of Operations Plan. The bill would also codify, for the first time, the responsibilities of the intelligence components of the Department, including “to ensure that duties related to the acquisition, analysis, and dissemination of homeland security information are carried out effectively and efficiently in support of the Under Secretary for Intelligence and Analysis.” Finally, the bill would also codify an Office of Infrastructure Protection, which would be headed by an Assistant Secretary for Infrastructure Protection and would enumerate the proposed responsibilities of the Assistant Secretary. S. 4 does not have a comparable provision.

To a certain extent, these H.R. 1 measures would codify existing practices and positions within the Department. Secretary Chertoff’s Second Stage Review of the Department made numerous changes in the DHS intelligence structure. For example, the erstwhile Directorate of Information Analysis and Infrastructure Protection was disbanded, and the Office of Information Analysis was renamed the Office of Intelligence and Analysis and became a stand alone entity. The Office of Infrastructure Protection was placed within the Directorate for Preparedness. The Assistant Secretary for Intelligence Analysis was also provided the title of the Department’s Chief Intelligence Officer.¹⁶

With respect to the responsibilities of the DHS intelligence components, those proposed in H.R. 1 are largely consistent with those outlined in DHS Management Directive 8110 *Intelligence Integration and Management* (January 2006). Under existing law and internal DHS regulation, it appears that the DHS Chief Intelligence Officer continues to have no budget execution authority with respect to the DHS intelligence components. Under the aforementioned DHS management directive, the Chief Intelligence Officer provides written performance objectives to the heads of the DHS intelligence components, and subsequently provides input and feedback to the component rating official for the component’s accomplishment of those objectives. Moreover, the Chief Intelligence Officer analyzes “... workforce requirements for intelligence functional personnel to establish recommended staffing and resource level parameters and guidelines for each Component to consider.” In short, the Chief Intelligence Officer, while responsible for intelligence integration across the Department, has direct budgetary control over only the largely headquarters-based Office of Intelligence and Analysis.

¹⁶ See DHS Management Directive 8110, *Intelligence Integration and Management*, January 30, 2006.

Interagency Threat Assessment Coordination Group

While S. 4 refers to the Interagency Threat Assessment Coordination Group, the group has alternatively been referred to as the “Federal Coordination Group” (FCG).¹⁷ As mentioned above, section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 established the Information Sharing Environment, led by a Program Manager. Part of the ISE Program Manager’s statutory responsibility is to provide and facilitate “... the means for sharing terrorism information among all appropriate Federal, State, local and tribal entities.” In November 2006, the Program Manager’s Office published the *Information Sharing Environment Implementation Plan*. The report recommended the establishment of an Interagency Threat Assessment Coordination Group (ITACG), to be located at the National Counterterrorism Center (NCTC) and managed by a senior level official from DHS. According to the November 2006 ISE report, “A primary purpose of the ITACG will be to ensure that classified and unclassified intelligence produced by Federal organizations within the intelligence, law enforcement, and homeland security communities is fused, validated, de-conflicted, and approved for dissemination in a concise and, where possible, unclassified format.”¹⁸ Although the ITACG is not yet operational, space at the NCTC has been designated, and the nomination process for state and local detailees to the ITACG is in process.¹⁹

S. 4 would codify the existence of an ITACG, which would “... facilitate the production of federally coordinated products derived from information within the scope of the information sharing environment ... and intended for distribution to State, local and tribal government officials and the private sector.” The Secretary of Homeland Security would designate a senior official who would “... manage and direct the administration of the ITACG.” The Secretary of DHS, in consultation with the Attorney General, Director of National Intelligence, and the Program Manager for the ISE would “establish standards for the admission of law enforcement and intelligence officials *from a State, local or tribal government into the ITACG* (emphasis added). H.R. 1 has no comparable provision.

There was some reported controversy over the extent to which DHS initially supported the detailing of state, local, and tribal government officials to the FCG.²⁰

¹⁷ See testimony of Charles Allen, DHS Chief Intelligence Officer, Before the House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, March 14, 2007.

¹⁸ See *Information Sharing Environment: Implementation Plan*, November 2006, p. 29. See also PM-ISE, *Guideline 2 — Develop a Common Framework for the Sharing of Information Between and Among Executive Departments and Agencies and State, Local, and Tribal Governments, Law Enforcement Agencies, and the Private Sector*, available at [<http://www.ise.gov/docs/guideline%20%20-%20common%20sharing%20framework.pdf>] (accessed June 25, 2007).

¹⁹ Conversation with PM-ISE officials, June 26, 2007.

²⁰ See Siobhan Gorman, “Out of the Loop on Terror Threats: Homeland Security Excludes, State, Local Officials from Group that Shares Data, *Baltimore Sun*, February 2, 2007. See also Siobhan Gorman, “State, Local Officials to Get Security Data,” *Baltimore Sun*, (continued...)

However, according to Charles Allen, DHS Chief Intelligence Officer, “...we are working to include additional people in the State and local governments.... In fact, in the initial startup staff, I envision two or three officers ... and I want to ensure you that there’s going to be growth in the State and local government representation.”²¹ It appears that the measures outlined in the ISE Program Manager’s November 2006 report and those in S. 4 pertaining to the potential codification of such a body are largely consistent.

Historically, there has been some level of distrust between some federal agencies and some state and local governmental entities engaged in law enforcement and homeland security activities. It could be argued that part of this distrust may be a result of a lack of mutual understanding with respect to the inherent limitations of intelligence — with federal officials not understanding entirely the demands of state and local consumers of intelligence, and state and local officials believing that the federal government possesses specific intelligence which they refuse to share. In this context, programs such as the ITACG that involve an exchange of personnel may be positive insofar as they allow for enhanced mutual understanding of the true role intelligence can play in countering terrorism.

²⁰ (...continued)
February 15, 2007.

²¹ See testimony of Charles Allen, DHS Chief Intelligence Officer, Before the House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, March 14, 2007.